IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 164 OF 2005

Jaysukh Salot & Anr ...Petitioners

Versus

Mrs. Priya Bhagwandas Chhabria
& Ors. ...Respondents

.....

Mr. M.A. Wanoo with Mrs. Divya Trivedi counsel for Petitioners

Mr. Bhagwandas Chhabria, Constituted Attorney of Respondents present in person.

.....

CORAM: B. H. MARLAPALLE, J.

DATED: 1ST MARCH, 2005

P. C.:-

1. Heard Mr. Wanoo with Mrs. Divya Trivedi, the learned counsel for the petitioners and Mr. Bhagwandas Chhabaria, Constituted Attorney of respondents.

2. Rule. Respondents waive service. By consent of the parties, the petition is taken for final hearing forthwith.

3. The present petitioners are impleaded as defendant Nos. 1 and 2 in Summary Suit No. 4832 of 1998 filed by the present respondents and there were

four other Summary Suits filed by the respondents i.e. Summary Suit Nos. 4828 of 1998 to 4831 of 1998. The first Suit was disposed of on 28.3.2003 on the basis of the evidence which have to be treated as common evidence. In view of the specific order passed on 21.11.2002 the recording of fresh evidence in the remaining four Suits was not necessary/required more particularly because of the common evidence having been recorded. The decision in Suit No. 4828 of 1998 has been confirmed by this Court in First Appeal Stamp No. 27611 of 2003 vide order dated 18.8.2003 whereby the appeal came to be dismissed. The defendants filed two separate applications at Exh. 24 and 25 respectively in Summary Suit No. 4832 of 1998 on or about 1.12.2004 praying for reading the common evidence recorded earlier and to retain the issues framed in Suit No. 4828 of 1998 and Suit No. 4829 of 1998 on 21.4.2003. The applications further prayed to recast the issues framed on 14.2.2002. On 15.12.2004 the learned judge of the trial Court was pleased to dismiss these applications with costs of Rs.2000/- in each.

4. By reading the Roznama on 15.12.2004 of the Court below, it is clear that while rejecting the applications at Exh.24 and 25 no reasons have been set out except noting down that the affidavits tendered in evidence of defendant No.2 in the Suit

were claimed to be mere formality. When the very same Court earlier had by a specific order directed the recording of common evidence in all suits, the prayer made by the defendants was not unreasonable or unwarranted. If the trial Court was satisfied that the applications were decided on merits and it was necessary to give reasons in support thereof and such reasons must stand just any order passed by the Court without assigning reasons cannot be tested any challenge in the higher forum. Subsequent Presiding Officer may in a given case decided not to forward earlier orders passed by his Predecessor but while doing so it is necessary to set out the reasons and merely saying that the applications are dismissed is totally an erroneous approach.

5. It would be therefore, necessary to remand the applications for fresh orders after hearing the respective parties and within a specified time limit. These applications are not required to be placed before the learned Same Judge if his roster does not list the concern Civil Suits i.e. Summary Suit Nos. 4829 of 1998 to 4832 of 1998 and the applications will have to be heard and decided by the Judge who holds charge of the said suits presently.

6. In the result, the petition is allowed and the impugned order below Exh.24 and 25 passed in Civil

Suit 4832 of 1998 is hereby quashed and set aside. The applications are restored to the file and the trial Court is directed to decide them afresh after hearing the parties concerned and as per law and pass a reasoned order. This should be done as expeditiously as possible and in any case within a period of four weeks from the receipt of writ of this Court.

7. Rule made absolute accordingly with no order as to costs.

8. Writ to go forthwith to the trial Court.